

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning, after 30 minutes of morning business, the Senate will resume consideration of the PATRIOT Act conference report. At approximately 11 a.m., the Senate will vote on the motion to invoke cloture on the PATRIOT Act. It is my hope cloture will be invoked and that we could then adopt the conference report during today's session. Senators should anticipate additional votes on legislative and executive items we must complete action on before breaking for the holidays, including a number of judges and other nominations. As all of our colleagues know, we have a lot of work to do and a lot to accomplish over the next several days before we break for the holidays.

I thank our colleagues for their patience and their hard work. We are working in a bicameral way. As our colleagues know, much of this legislation has to originate now and pass through the House before coming to us. We are working with the House to get that legislation appropriately.

THE PATRIOT ACT

Mr. FRIST. Mr. President, later this morning the Senate will vote on the issue of whether to limit debate on the USA PATRIOT Act. I urge my colleagues to support the cloture motion. The PATRIOT Act passed with near unanimous support 4 years ago. Since its passage, this commonsense law has proved to be one of the most useful, important tools we have in our antiterror arsenal. If we can take ourselves back to that morning on September 11, many people were at work, many others on the way to work when we all heard and soon saw that shocking news that 19 young men had hijacked four passenger planes and slammed them into the World Trade Center and into the Pentagon, 3 or 4 miles away. A fourth plane was en route, and its fate was unknown.

The oceans separating us from them suddenly vanished and America was struck with a horrific force we had never seen before. Three thousand innocent Americans lost their lives, and we learned on that dark day that out there, hiding in the shadows, is a patient and brutal enemy, determined to inflict colossal violence on our shores.

This enemy does not wear a uniform or march under a national banner. It hides among us as neighbors and coworkers, at subway shops and at cyber cafes. It hides in plain sight, plotting and planning until the moment comes to inflict its massive and terrible cruelty.

On 9/11, our enemy declared war on the American people, and war is what

they got. We toppled the Taliban in Afghanistan. We brought down Saddam Hussein and dismantled his tyranny. Yesterday, under the protection of brave American and Iraqi soldiers, 11 million Iraqi people streamed to the polls to freely choose, for the first time in the country's modern history, a permanent, democratically elected government of and by the people. It was a historic milestone for the Iraqi people. It was a historic milestone for freedom. It proved once again that every day we are making progress.

We are fighting the terrorist enemy at home and in the mountains of Afghanistan, on the worldwide Web and in the streets of Baghdad. We are coordinating our efforts both inside and outside our borders so that we never have to suffer another terrorist attack.

In the days following 9/11, we learned that the enemy had been able to elude law enforcement, in part because our agencies were not able to share key investigative information. Once we understood this awful reality, we swiftly took action. Within 6 weeks of the attacks on America, the Congress passed the USA PATRIOT Act with overwhelming bipartisan support. The Senate vote was near unanimous, with 98 Senators voting in favor. The PATRIOT Act went to work tearing down the information wall between agencies and allowed the intelligence community and law enforcement to work more closely in pursuit of terrorist suspects.

Since then, it has been highly effective in tracking down terrorists and making our country safer. Because of the PATRIOT Act, the United States has charged over 400 suspected terrorists. More than half of them have already been convicted. Because of the PATRIOT Act, law enforcement has broken up terrorist cells all across the country, from New York to California, Oregon, Virginia, and Florida.

In San Diego, officials were able to use the PATRIOT Act to investigate and prosecute several suspects in an al-Qaida drug-for-weapons plot. The investigation led to several guilty pleas.

The PATRIOT Act also allowed prosecutors and investigators to crack the Virginia Jihad case, involving 11 men who had trained for Jihad in northern Virginia, Pakistan, and Afghanistan. It specifically encourages information sharing among the many branches of Government so that our crime-fighting officials can adapt and respond more effectively to the terrorist threat. It also levels the playing field, so that law enforcement utilizes the tools they already have in other kinds of criminal cases, such as drug trafficking and mob activity. It is now easier for law enforcement at all levels to appropriately investigate and track suspected terrorists already in the United States.

The conference report to reauthorize the PATRIOT Act includes all of these provisions and goes further to strengthen and improve America's security. It enhances vital safeguards to

protect our civil liberties and privacy, and it contains new provisions to combat terrorist financing and money laundering, to protect our mass transportation systems and railways from attacks such as the ones on the London subway last summer, secure our sea-ports, and fight methamphetamine drug abuse, America's No. 1 drug problem.

The clock is ticking. We do need to take action now. In just 15 days—December 31—nearly all of the provisions of the PATRIOT Act expire. If they do, we are right back to where we were pre-9/11. The information walls go right back up. We cannot let this happen. We cannot lose ground.

The House, as we all know, acted last week. They passed a conference report with a bipartisan vote of 251 to 174. Now is the time for the Senate to follow suit.

The choice is clear. Should we take a step forward in making America safer or should we go back to the pre-9/11 days when terrorists slipped through the cracks? I believe the answer is clear, and I believe we have only one choice.

I ask my colleagues who are threatening to filibuster to take a closer look at that PATRIOT Act conference report. This reasonable compromise reached by Senate and House negotiators may not contain everything that each and every Member in this body would like, but it is much closer to the Senate bill that passed unanimously than it is to the House bill. It includes 4-year sunsets on the most controversial provisions, just as in the Senate version. And like the Senate version, it includes extensive privacy and civil liberty safeguards, as well as enhanced congressional oversight.

As we prepare to vote on cloture later this morning, I urge my colleagues to join in support of this essential legislation.

The FBI, the intelligence community, and our law enforcement need us to act. The American people want us to act. American national security demands that we act. A nation in fear cannot be a nation that is free.

I urge my colleagues to stand up for freedom and security for the United States of America.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. MARTINEZ). The minority leader is recognized.

THE PATRIOT ACT

Mr. REID. Mr. President, in approximately an hour and a half, there will be a vote on the motion to invoke cloture on the PATRIOT Act conference report. Rather than terminate debate on this flawed piece of legislation, the Senate should work harder to achieve a strong, bipartisan PATRIOT Act that

strengthens national security while protecting the privacy of innocent Americans.

Earlier this year, after negotiations that went late into the night, the Senate Judiciary Committee unanimously approved a bill to reauthorize and improve the PATRIOT Act. Soon after, the full Senate passed this bill by unanimous consent. Every Senator, Democrat and Republican, approved this reauthorization of the PATRIOT Act. Every Democrat and every Republican in the Senate—every one of us—is firmly on record in support of giving law enforcement the appropriate tools to fight terrorism.

We all know the House of Representatives is in shambles. Leadership is in a state of disarray.

The spirit of bipartisanship that led to passage of the Senate bill, because of the problems in the House of Representatives, did not prevail in the conference. Not long after the House appointed conferees, Democratic negotiators were shut out of discussions. In fact, Senator LEAHY's staff was directed by the chairman of the Judiciary Committee in the House to leave the room.

The final bill was written by Republican-only conferees working behind closed doors with Justice Department lawyers. The result was an imbalanced conference report that departed significantly from the bipartisan Senate bill.

Chairman SPECTER, to his credit, joined other conferees in refusing to sign the conference report. Over the next few weeks, he and Senator LEAHY worked hard to improve it and succeeded in eliminating some of the worst provisions.

I commend and applaud the efforts of the chairman and our ranking member to work to improve this conference report.

But I am sorry to say, in my view—and in the view of many of my colleagues on both sides of the aisle—the conference report still does not contain enough checks on the expanded powers granted to the Government by the PATRIOT Act. It simply is not acceptable.

I supported the passage of the original PATRIOT Act in 2001. This was enacted in the days immediately following the vicious attacks on September 11, 2001. I do not regret my vote. Much of the original act consisted of noncontroversial efforts to update and strengthen basic law enforcement authorities. More than 90 percent of the 2001 act is already part of permanent law and will not expire at the end of this year.

We are currently considering renewal of these provisions that were considered so expansive and so vulnerable to abuse that Congress wisely decided to subject them to 4-year sunsets, meaning that after 4 years they had to be renewed or they would fall. The authors of the act wanted Congress to reassess these in a more deliberative manner with the benefit of experience.

The act of 2001 came, as I mentioned, when the country was feeling the dev-

astation of the terrorist attacks of 2001. I, frankly, don't think we took enough time at that time to do it the right way. That is why a number of us demanded the sunset provisions.

Now, more than 4 years later, we are presented with the opportunity to do it right.

While the conference report before us makes certain improvements over the original PATRIOT Act, it still does not strike the right balance.

We can provide the Government with the powers it needs to investigate potential terrorists and terrorist activity and at the same time protect the freedom of innocent Americans.

Liberty and security are not contradictory. Additional congressional and judicial oversight of the Government's surveillance and investigative authorities need not hamper the Government's ability to fight terrorism.

I say to the Presiding Officer, someone whose heritage is from the island of Cuba, where there is very little liberty and very little security, we are in the United States of America. We are not a dictatorship like Cuba. We can have liberty and we can have security.

As I said, additional congressional and judicial oversight of the Government's surveillance and investigative authorities need not hamper the Government's ability to fight terrorism. These checks are needed to ensure that the Government does not overreach or violate the privacy of ordinary American citizens who have nothing to do with terrorism.

Is there any reason to be concerned? Yes. There is a reason to be concerned.

For example, the need for such checks is based on a number of things, not the least of which is the story that ran in the Washington Post in early November of this year after the Senate passed the bill. The story reported that the FBI issues more than 30,000 national security letters a year—30,000. These letters go to businesses. And they say: I want you to tell everything you know about Ron Weich, Gary Myrick, Russ Feingold, Herb Kohl. It doesn't matter who it is. And that person—the names I have mentioned—does not know that they have had this request to give all information about them or any information about them. The person who has been requested to give the information can't tell them. It is against the law to tell them.

These national security letters are issued by FBI agents without any judicial supervision. The third party recipients of these orders, such as banks, phone companies, and Internet service providers, are prohibited, as I have said, from telling anyone that they have been served. The customers whose records are seized will never know that the FBI has gathered their personal information.

For example, the article described an incident at the end of 2003 in which the Department of Homeland Security compiled information of hundreds of thousands of New Year's visitors to Las

Vegas. They obtained the records of everyone who had rented a hotel room, car, or storage unit, and every airplane passenger who landed in the city of Las Vegas. They obtained records, how much they paid for their hotel room, did they order any X-rated movies. I don't know what other information they got.

When Las Vegas businesses objected to this effort to gather unprecedented amounts of information on their customers, the FBI responded by serving them with national security letters. According to one law enforcement source quoted in this piece, agents encouraged voluntary disclosure of information by threatening to demand further records, further profiles from the casinos about their guests.

Perhaps worst of all, what happened in Las Vegas did not stay in Las Vegas, but, instead, stayed in Federal databanks. It is still in the Federal databanks. None of the information gathered in that investigation has been purged to this date. The rental and travel records of hundreds of thousands of innocent Americans remain in Government hands.

Las Vegas first; was there any place else? Did they go to the New Year's Eve celebration at Times Square in New York? Did they go to the warm beaches of Florida snooping and spying?

I have three major concerns about this conference report. First, I am disturbed the conference report provides neither meaningful judicial review nor a sunset provision for those provisions regarding national security letters. Instead of protections, this conference report effectively turns these NSLs, as they are referred to, national security letters, into administrative subpoenas. For the first time, the report authorizes the Government to seek a court order to compel compliance with one of these letters. Recipients who do not comply could be found in contempt, fined, or even sent to jail.

A third-party recipient, such as one of the Las Vegas hotels, could theoretically challenge an NSL in court in order to protect the privacy of its customers, but the conference report makes it unlikely such judicial review will matter because the court is not required to find any individualized suspicion that the records sought are connected to a terrorist.

Second, I have significant concerns about section 215, often referred to as the library provision. Under a key provision in the Senate compromise reached this summer, the Government would have been required to show that the records sought under this provision had some connection to a suspected terrorist or spy. But under the conference report we have now before the Senate, the Government may demand sensitive personal information of innocent Americans merely upon a showing that the records are "relevant" to a terrorism investigation.

For example, the Government may be broadly suspicious of individuals in a

particular immigrant community. Under section 215, the Government could go to the library in that community and demand the records of library cardholders to see which individuals are reading what. What about someone reading scientific texts, maybe even Smithsonian or one of the magazines people read dealing with automobiles, or Scientific American? Are these people considered terrorist threats?

A court challenge to a section 215 order must be conducted in secret. At the Government's request, the recipient is not permitted to review Government submissions regardless of whether the Government has any national security concerns in that particular case. Moreover, the conference report does not permit any challenge to the automatic permanent gag order under section 215.

Third, the conference report contains sections not included in either the House or Senate bills limiting the right of habeas corpus in cases that have nothing to do with terrorism. These provisions have not been passed by the Senate or the House. One provision would eliminate judicial review of whether a State has an effective system in providing competent lawyers in death penalty cases. That does not belong in this. Such a far-reaching change should not be inserted in an unrelated conference report.

There are many other problems with the conference report that leaves largely in place a definition of domestic terrorism so broad it could be read to cover acts of civil disobedience. For example, a few days ago we had members of the clergy who, believing that the budget before the House and the Senate is immoral, were protesting, saying it is a bad budget. There were a number of arrests. Are these individuals to be deemed domestic terrorists? They could be under the conference report.

The conference report still contains a catchall provision that authorizes a government to conduct a sneak-and-peek search upon a showing that notice would seriously jeopardize an investigation. Sneak and peek, what does it mean? It means they can go into your home, look around, see if there is anything that is incriminating, and then come back out and seek permission to use what they have obtained all without telling you—which I believe is un-American.

As many critics of the bill have observed, a good prosecutor could fit about any search under this provision. I say "good" prosecutor any prosecutor. He wouldn't even have to be good.

The Justice Department reported 90 percent of the searches that have taken place under sneak and peek under this act have nothing to do with terrorism. For these and other reasons, this conference report does not meet the American standard. It certainly should not merit Senate approval.

Fortunately, we do not face the choice of accepting this conference re-

port or allowing the 16 PATRIOT Act provisions to expire. I am a cosponsor of S. 2082, introduced by Senator SUNUNU, to enact a 3-month extension of the expiring PATRIOT Act so we can take the time we need to produce a good bipartisan bill that will have the confidence of the American people.

The majority leader said previously he won't accept such a 3-month extension. I hope, if we fail in invoking cloture, he would reconsider this. I am confident in the end that it would be so much better that we extend this for 3 months to see if we can reach an acceptable goal.

Based on that, I ask unanimous consent the cloture vote be vitiated, the Judiciary Committee be discharged from further consideration of Senator SUNUNU's bill, S. 2082, the 3-month extension of the PATRIOT Act, the Senate proceed to its immediate consideration, the bill be read the third time and passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there an objection?

Mr. FRIST. Reserving the right to object.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, with regard to the unanimous consent request, I need to be clear once again, and I have over the last couple of days, that I absolutely oppose a short-term extension of the PATRIOT Act. The House of Representatives opposes such an extension and the President will not sign such an extension. Extending the PATRIOT Act does not go far enough.

It is time to bring this to a vote this morning. We will see what the outcome of that vote is in terms of ending debate. I don't understand why opponents of the PATRIOT Act want to extend legislation at this juncture that has been fully debated, that has been the product of reasonable compromise and in a bipartisan way over the last several weeks and months.

With an extension, if that were to be the case, we would not be able to take advantage of the civil liberty safeguards that have been placed in the conference report, the additional provisions on protecting our ports, on addressing money laundering by terrorists, protection of our railways and mass transit systems, fighting methamphetamine abuse.

The PATRIOT Act represents a historic choice, a clear choice: Should we take a step forward or should we take a step backward in keeping America safe?

I object.

The PRESIDING OFFICER. The objection is heard.

Mr. REID. Mr. President, I will continue to work to reauthorize the PATRIOT Act in a way that gives the Government needed tools to protect national security while placing sensible checks on those expanded powers.

I apologize to all my colleagues. I am sorry I took more time than I should

have. I know there is a lot to do. I appreciate everyone's courtesy.

The PRESIDING OFFICER (Mr. ISAKSON). Under the previous order, the next 15 minutes is supposed to be controlled by the minority leader or his designee.

The Senator from Mississippi.

Mr. LOTT. Mr. President, I ask unanimous consent that I be able to proceed to a piece of legislation before we go to morning business. I think we have it agreed to and worked out.

The PRESIDING OFFICER. Is there objection to proceeding?

Hearing none, the Senator is recognized.

UNANIMOUS-CONSENT REQUEST— H.R. 4440

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 328, H.R. 4440.

Mr. REID. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The minority leader.

Mr. REID. Mr. President, through the Chair to the distinguished junior Senator from Mississippi, it is my understanding this is the Katrina matter we spoke about last night.

Mr. LOTT. It is, Mr. President.

Mr. REID. Mr. President, I would say to my friend, we are very close to being able to have that cleared on this side. In fact, I have been very busy since early this morning. I have not had a chance to check with even my staff on this yet. But I think we are close to being able to do something very quickly. So, therefore, I object.

Mr. LOTT. Mr. President, let me say to Senator REID, I have been working with the Senator and both sides of the aisle, and we are trying to make sure everybody understands what we are doing here. This is very critical legislation to aid the Katrina victims in all the affected States, including Texas, Louisiana, Mississippi, and Alabama.

I hope we can get this agreed to shortly before we get into the extended debate with regard to the other legislation, the PATRIOT Act. So as soon as we could get notification from the Democratic leader, we are ready to proceed. I will be standing by waiting for that opportunity because there are thousands of people waiting for this help, and they need it now.

I thank Senator REID. And since he has objected, I will withhold at this time but will be on standby ready to go momentarily.

I yield the floor.

The PRESIDING OFFICER. Objection is heard.

The Senator from New Hampshire.

ORDER OF PROCEDURE

Mr. GREGG. Mr. President, what is the regular order now? Are we in morning business for 15 minutes to the minority and 15 minutes to the majority?